Circuit Court for Baltimore County
Case No.: C-03-CR-19-002706

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1760

September Term, 2022

DAVID MARTIN HAAS, JR.

v.

STATE OF MARYLAND

Wells, C.J.,
Graeff,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: May 9, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, David Martin Haas, Jr., was indicted in the Circuit Court for Baltimore County and charged with first degree murder, first degree child abuse, first degree assault, and related counts in connection with the death of two-year-old D.L[1] The State entered a *nolle prosequi* on the first degree murder charge, and tried by jury, Haas was convicted of first degree child abuse, first degree assault, and second degree assault. After Haas was sentenced to life with the possibility of parole for the first degree child abuse conviction, with the remaining counts merged, he filed this timely appeal to ask us to address the following questions:

> 1. Did the trial court err in admitting impermissible opinion testimony?
>
> 2. Did the trial court err in admitting inadmissible hearsay testimony?
>
> 3. Was the evidence legally insufficient to sustain the convictions?

For the following reasons, we shall affirm.

BACKGROUND

On June 29, 2019, at around 8:50 p.m., Baltimore County first responders went to a residence in Essex in response to a 911 call that an individual had fallen in a bathtub**.** Arriving within five minutes of the 911 call, Rebecca Rice, a paramedic with the Baltimore County Fire Department, found a two-year-old boy, later identified as D.L., lying on the

[1] Under Md. Rule 8-125, this Court shall not identify the victim of a crime, or related individuals, except by his or her initials, if the victim was a minor child at the time of the crime, or if the alleged crime would require the defendant to register as a sex offender if convicted. Md. Rule 8-125 (a), (b)(1). The Rule further provides that this Court shall not include other information from which the victim could be identified. Md. Rule 8-125(b)(2).

bed inside the apartment. Haas stood nearby and was "very frantic," "yelling" and in "hysterics." Haas stated that he had placed D.L. in the bathtub to wash him, then left him alone for approximately two to five minutes when another child in the apartment, A.L. called for him. When he returned, he found D.L. unresponsive, face down in the water. Suggesting that D.L. must have fallen, Haas also stated that he dropped D.L. as many as four times when he tried to pick him up and remove him from the tub.[2]

Rice immediately noticed that "[t]he child was pale in color, cold to the touch and had um, bruising on him." The bruising was "significant" and was apparent on D.L.'s face, chest, and abdomen, and "didn't match up with falling in a bathtub." Rice immediately checked for a pulse, found none, and began cardiopulmonary resuscitation ("CPR").

Rice further testified that when they touched D.L. there was "no color change" in the child's skin color, suggesting "that the heart wasn't beating and circulating to provide circulation to the rest of the body." She opined, based on her experience, that circulation had not occurred "for quite some time." Rice further testified, without objection, that this was not consistent with a recent drowning.[3]

[2] At some point after first responders arrived, Rice decided to move D.L. outside to the ambulance for treatment because Haas became "hostile."

[3] Michael Janney, a Baltimore County Fire Technician/EMT on the scene, also testified, without objection, that when he had previously responded to a drowning, "[t]here's water coming out of their lungs." There was no evidence from any witness that water came out of [D.L.]'s lungs. Janney also testified there was no water or blood in the bathtub and that the bathroom looked like it had been "cleaned up."

Rice explained that, although D.L. was not breathing, this was a "higher priority" call. She placed a valve mask around D.L.'s mouth to try to provide oxygen during the treatment. When that apparently did not work, Rice "went to go intubate the patient and his jaw [was] stiff." Asked why this was notable, Rice testified, without objection, that "when death occurs, rigor mortis is the first thing to set in. That's what they teach us in training. It comes in within the first hour." She further testified that she did not expect to see rigor mortis in a reported recent drowning. She expected to see "blue lips" and for the child to be wet, neither of which was observed in this case.

After D.L. was transferred to Franklin Square Hospital, Rice also noticed that rigor mortis was present in D.L.'s arms. Rice found this significant because it suggested "circulation hadn't been present for quite some time." As will be discussed in the first question presented, Michael Bruzdzinski, a Fire Apparatus/Driver and Emergency Medical Technician ("EMT") for the Baltimore County Fire Department who responded to the scene, testified that he also saw that D.L.'s jaw was "real tight and unable to be moved," and that in his experience, a body is moveable for "probably 45 minutes to an hour" after death.

Rice testified that the decision was made to terminate resuscitation efforts at the hospital. D.L. was pronounced dead at 9:20 p.m., June 29, 2019.

According to Dr. Stephanie Dean, the medical examiner who performed D.L.'s autopsy, D.L. was two years and three months old, weighed twenty-two pounds, and was two feet 11 inches tall. There were approximately fifty (50) bruises on D.L.'s person, including to the child's neck and head, the front and back of the torso, and to the arms and

legs. The majority of this bruising was "recent" and "acute" and was consistent with blunt force trauma. She also explained that bruises do not occur after death because that requires a beating heart.

Further injuries included that D.L.'s pancreas was transected, meaning "torn in half." Dr. Dean testified that this type of injury was "very, very rare" in a child and typically only occurred in "severe impacts" such as "a motor vehicle collision or a fall from a great height." There were also tears to the mesentery and bowel, which, again, was "very, very rare," and provided "severe evidence of some sort of blunt force trauma to the abdomen." Further, D.L. sustained two rib fractures on the left side that were recent and showed no sign of healing. The autopsy also revealed 300 milliliters of free blood in D.L.'s abdominal cavity. Dr. Dean explained that this was "blood that's not in blood vessels," and was analogous to "bleeding out."[4]

In conclusion, Dr. Dean opined that "the combination of all of these injuries, and most significantly, the internal, abdominal trauma, is the cause of his death" and that it could have taken minutes to hours for this to occur. Within a reasonable degree of medical certainty, Dr. Dean concluded the cause of death was due to the aforementioned multiple injuries and the manner of death was homicide.

After D.L. was pronounced dead, Corporal Ryan Massey, assigned at the time to the Baltimore County Police Homicide Division, responded to Franklin Square Hospital that

[4] Dr. Dean elaborated that 300 milliliters was the equivalent of "over one cup of blood, if you can imagine what a cup of blood looks like. Or to put it another way, when you go to the doctor to get blood drawn, one of those tubes that they draw blood in is, on average, about 10 milliliters. So, it's about 30 times that amount."

evening and was briefed about the facts of this case. As part of the investigation, Corporal Massey first interviewed D.L.'s mother, C.G., one-on-one at the hospital. When he learned that C.G. was at work when the incident happened, Corporal Massey spoke to a few more individuals, then prepared a search warrant for the apartment, which was executed during the early morning hours the same day.

After viewing the apartment, Corporal Massey met Haas at the Homicide Division, where he had been transported for an interview. That interview, which transpired at around 3:00 a.m. that same day, was recorded and played for the jury in court.

During the interview, Haas stated that he was home alone with D.L. and D.L.'s sister, A.L. He informed the detective that he placed D.L. in the shower and stepped away when A.L. called for him. When he returned to the bathroom approximately four minutes later, D.L. was "face down in the shower." Haas said he had difficulty picking D.L. up because he was "wet" and "just like, lifeless," but that he put him on the bed and started "blowing in his mouth and pushing him on his chest," and then he called 911. This first interview concluded with Haas claiming that D.L. already had bruises on his face, on his "lower butt" and on his back, and that D.L.'s mother, C.G., told him these occurred when D.L. was playing outside.

At around 8:00 a.m. on June 30, 2019, the day after the incident, Corporal Massey met the assistant medical examiner assigned to this case, Dr. Dean. Dr. Dean informed Massey that the number of bruises and the extent of the injuries suggested that D.L. did not drown as reported. She was "leaning towards homicide" based on the injuries and that it would have taken "a few hours for the victim to pass away from his injuries[.]"

On July 2, 2019, Corporal Massey and another officer went to Haas' residence and surreptitiously recorded him on a concealed digital recorder. That recording was admitted without objection and played for the jury. On that recording, Haas admitted that D.L and A.L. were both being punished that day for violating various rules. The children remained inside the house with him all day because they were being punished.

Haas continued that the children were fed and then, at some point that evening, D.L. had a bowel movement inside his Pack 'n Play playpen. Haas texted D.L.'s mother, C.G., at around 6:05 p.m., and told her about D.L.'s bowel movement. He then took him to the bath to clean him up.

Afterwards, he returned D.L. to his Pack n' Play, stating later during the interview that D.L. was there for "pretty much all day." After a couple hours, D.L. had another accident inside the Pack n' Play. Haas texted C.G. again, stating: "Your son decided to take his diaper off in the playpen and shit and piss everywhere and then, rolled in the shit on the bathroom floor when I brought him in." For the second time in two and half hours, Haas again took D.L. to the shower to clean him up.

It was around that time that Haas heard A.L. calling him from another room. When he returned to the bathroom, Haas found D.L. face down in the bathtub. Haas grabbed him, but D.L. "slipped out of my arms" a number of times. Haas placed D.L. on the bed and started performing CPR. Haas told the detective "I don't know CPR. I just know what I see on TV." Haas did not know if he just used his hands or his whole body to perform chest compressions. He stated that "at that point, I was panicking, so I probably put pressure." He also tried to breathe into D.L.'s mouth but he saw "brownish," "colored" "stuff started

coming out of his nose and mouth." He also told the detective "I don't know if I was doing it right."[5]

The jury also heard from D.L.'s mother, C.G.. C.G. testified, without objection, at around the time of this incident her relationship with Haas "was rocky" and that they fought "a lot." On some prior occasions, C.G. continued, the fighting would sometimes be "physical," and she testified that Haas struck her, choked her and, on some prior occasion, held her against the wall to the point where she could not breathe. Despite this, C.G. testified she did not have any problems with Haas watching the kids while she was at work at a local restaurant as a bartender.

On the day in question, C.G. left the house for work between 11:00 and 11:30 a.m. because she was scheduled to start at noon. She testified that D.L. complained of a "stomachache" and had diarrhea, but "nothing out of the ordinary." Asked whether D.L. had any injuries when she left for work that morning, C.G. testified that he had a couple bruises, including one on his cheek, one on his forehead and one on his back. There were no other bruises on D.L.[6]

[5] The factfinders in this case, the jury, heard evidence from Dr. Dean that the rib fractures could have been caused by either blunt force trauma or the CPR performed on D.L.

[6] This appears consistent with the information C.G. provided to Corporal Massey when he interviewed her at the hospital immediately after the incident. It is also consistent with the information provided by D.L.'s grandmother, D.C., who testified that D.L. came to her house approximately five days before this incident to swim in her pool and did not have any significant bruises other than one on his cheek.

After C.G. left, Haas was alone with the children throughout the day. C.G. testified that, at around 6:05 p.m., Haas texted her at work to tell her D.L. "had pooped himself again. That he was having, you know, diarrhea. But that—you know,—and had been a little rambunctious that day. That's about it. Besides that,—I mean, they were on time out. I remember him saying they were on time out." C.G. explained that she and Haas were potty training D.L. D.L. sometimes wore diapers and sometimes not and was having problems with diarrhea. D.L. normally slept in the Pack 'n Play. Whenever D.L. had an accident that needed to be cleaned up, C.G. testified they would take him out of the playpen and clean him off in the bathtub.

After this, and later in her shift at the restaurant, C.G. was informed that she needed to hurry home because "[t]here's something wrong with D.L." When she arrived home, she was informed by several first responders that D.L. was not breathing and had been taken to the hospital. When she arrived at Franklin Square hospital, C.G. was informed that her son was dead.

We shall include additional detail in the following discussion.

DISCUSSION

I.

Haas first contends the court erred by admitting expert opinion in the guise of lay opinion. Haas challenges Bruzdzinski's testimony that, with respect to D.L.'s jaw tightening, a body remains flexible for forty-five minutes to an hour after death. The State responds this issue was waived because Rice testified about the same subject matter,

notably in more detail, without objection. The State also disagrees on the merits and argues any error was harmless beyond a reasonable doubt, again based on Rice's prior testimony.

Before we set out the pertinent testimony, generally, rulings on the admissibility of evidence are reviewed for abuse of discretion. *See Brooks v. State*, 439 Md. 698, 708 (2014). The same standard of review applies to both expert and lay opinion evidence. *See Abruquah v. State*, 483 Md. 637, 652 (2023); *Freeman v. State*, 259 Md. App. 212, 229 (2023), *cert. granted*, 486 Md. 228 (*argued* April 9, 2024). Opinion testimony is governed by the Maryland Rules. Maryland Rule 5-701 provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

Maryland Rule 5-702 provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

"The rules of evidence distinguish between the types of opinions and inferences that can be expressed by a lay witness and those for which the witness must be qualified as an expert." *State v. Galicia*, 479 Md. 341, 389, *reconsideration denied*, 479 Md. 341, *cert. denied*, 143 S.Ct. 491 (2022). Pursuant to Maryland Rule 5-701, lay witness opinion or inference testimony "is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the

witness's testimony or the determination of a fact in issue." "By contrast, 'when the subject of the inference is so particularly related to some science or profession that is beyond the ken of the average lay[person],' it may be introduced only through the testimony of an expert witness properly qualified under Maryland Rule 5-702." *State v. Galicia*, 479 Md. at 389 (quoting *Johnson v. State*, 457 Md. 513, 530 (2018)); *see also Freeman*, 259 Md. App. at 230 ("[E]xpert testimony is not required simply because one can explain a matter scientifically") (quoting *Johnson*, 457 Md. at 516). "'If a court admits evidence through a lay witness in circumstances where the foundation for such evidence must satisfy the requirements for expert testimony under Maryland Rule 5-702, the court commits legal error and abuses its discretion.'" *Id.* (quoting *Johnson*, 457 Md. at 530); *see also Ragland v. State*, 385 Md. 706, 725-26 (2005) (observing that permitting lay opinion based on specialized knowledge, education, or skill, "parties may avoid the notice and discovery requirements of our rules and blur the distinction between the two rules").

With these principles in mind, we turn to the testimony at issue. Michael Bruzdzinski, a Fire Apparatus/Driver and Emergency Medical Technician ("EMT") for the Baltimore County Fire Department, explained that all people in the fire department are trained as EMTs. He received 132 hours of classroom training as well as "ride-alongs" as part of this training. He was trained to perform lifesaving techniques, but admitted that did not include as much training as a paramedic would receive. He explained that, as a first responder, he was "cross-trained" to "provide services" or "whatever is needed," and that he was "trained to at least get some kind of care started to help the patient." Bruzdzinski

responded to an average of ten to fifteen calls a day with the fire department, and about seventy-five percent were medically related.

On the day in question, Bruzdzinski responded to the scene along with others from his company. Bruzdzinski, the driver of the engine, parked and then followed the medic crew and other firefighters into the apartment. He saw the paramedics performing CPR on D.L. Bruzdzinski noticed that D.L. was pale and had "bruises and contusions all over his body."

At some point, the paramedic in charge, Rebecca Rice, made a decision to move D.L. to the ambulance, because conditions for possible treatment were better. Bruzdzinski helped move some equipment to the ambulance and helped with patient care. The issue presented concerns the following testimony:

> [PROSECUTOR]: Okay. So, when you were helping with patient care, can you tell us what happened? What you observed.
>
> MR. BRUZDZINKSI: I went—well, I started with patient care. I took over ventilations, providing oxygen to the child's body. And he was cool to the touch, but he was—like I said, he had bruises all over his body. His jaw was real tight and unable to be moved. Um—
>
> [PROSECUTOR]: So, the jaw being tight and unable to be moved. Does that affect the ventilation?
>
> MR. BRUZDZINKSI: Yes.
>
> [PROSECUTOR]: And can you describe how?
>
> MR. BRUZDZINKSI: Ah, it just keeps his mouth closed so we can't force air into it-- into his body.
>
> [PROSECUTOR]: So, were you able to ventilate him in any other way?
>
> MR. BRUZDZINKSI: No. We, we, we did the best we could, but—

[PROSECUTOR]: And when you say, we did the best you could, what did you try to do?

MR. BRUZDZINKSI: We just keep going, but he was pretty much deceased at the time.

[PROSECUTOR]: Okay. So, what does—the jaw tightening. What does that mean to you?

MR. BRUZDZINKSI: To me, it means that the, the patient—the person has been dead for—not—for an unknown period of time. If it was a recent injury, the body, the body would still be flexible and movable like any other living person's body would be.

[PROSECUTOR]: *And in your experience, how long is the body flexible and movable after death?*

[DEFENSE COUNSEL]: Objection.

THE COURT: What's the basis?

[DEFENSE COUNSEL]: Excuse me?

THE COURT: What is the basis for your objection?

[DEFENSE COUNSEL]: I, I don't know how this gentleman would be able to make a—

THE COURT: All right.

[DEFENSE COUNSEL]: —medical—

THE COURT: Overruled.

[PROSECUTOR]: All right. *In your experience, how long does the body stay flexible after death?*

MR. BRUZDZINKSI: *Within, probably 45 minutes to an hour*.

(Emphasis added).[7]

Haas contends the emphasized testimony was inadmissible expert opinion that was offered to prove the time of death in this case. The State responds that the issue is waived because Rice offered similar testimony the day before, as follows:

> [PROSECUTOR]: And did you have an occasion to um, (PAUSE) — you said you didn't have—I'm sorry. You didn't have to wipe him down. What, if anything, else did you observe in your treatment of the child that was unusual to you?
>
> MS. RICE: Like I said, the jaw—
>
> [PROSECUTOR]: Why is that unusual?
>
> MS. RICE: Normally, I would be able to intubate the patient to put a breathing tube in.
>
> [PROSECUTOR]: What is required to intubate the patient?
>
> MS. RICE: Um, a laryngoscope handle, which would go into the mouth and lift it up so I can see the vocal cords to place the tube in the, in the correct place.
>
> [PROSECUTOR]: Were you able to do, do that here?
>
> MS. RICE: I was not able to. Um, I couldn't open the, the patient's jaw.
>
> [PROSECUTOR]: Okay. And you indicated—what is rigor mortis?
>
> MS. RICE: It basically—the stiffness begins to settle in after death occurs because the—there's no circulation.
>
> [PROSECUTOR]: Okay.

[7] Bruzdzinski later testified that D.L. was deceased, his "muscles were starting to tighten up," this was consistent with the jaw clenching he observed, and that D.L.'s bruising injuries were not consistent with him being dropped.

> [PROSECUTOR]: How long after death?
>
> [PROSECUTOR]: *Do you know how long—about how long after death that would occur?*
>
> MS. RICE: *We're taught in school that it's about an hour.* Because we're taught that it settles in and then, it, it disappears and then, comes back.

(Emphasis added).[8]

"[I]t is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered." *Klauenberg v. State*, 355 Md. 528, 545 (1999); *see also* Md. Rules 4-323 (a), 8-131 (a). "This also requires the party opposing the admission of evidence to object each time the evidence is proffered by its proponent." *Klauenberg*, 355 Md. at 545. As the Maryland Supreme Court explained in *Yates v. State*, 429 Md. 112, 120-21 (2012), "[w]here competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received." (citation and internal quotation marks omitted); *see also DeLeon v. State*, 407 Md. 16, 30-31 (2008) (holding that an objection was waived to testimony about gang affiliation where "evidence on the same point [was] admitted without objection" elsewhere at trial); *Benton v. State*, 224 Md. App. 612, 627 (2015) ("[O]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection") (citing *DeLeon, supra*). Assuming Haas' brief and general objection was enough to raise the issue, *see Klauenberg*, 355 Md. at 541 (limiting appellate review to grounds raised at trial), Haas failed to object

[8] Rice further testified that the standard of care was followed despite these observations because of the victim's age, explaining, "[i]f we find an adult with rigor placed in the jaw, we do no, we do not resuscitate. That's a, a protocol requirement for termination [of] resuscitation."

when the same testimony came in through Rice. We hold that this issue is not preserved for our review.

Had we reached the issue, we note that neither party has cited a Maryland case, nor have we found one, directly on point. There are several out-of-state cases that suggest testimony concerning rigor mortis as it relates to time of death requires testimony from an expert. *See State v. Miller*, 921 P.2d 1151, 1159-60 (Ariz. 1996) (observing that, even had argument not been waived, trial court properly admitted expert opinion from medical examiner concerning rigor mortis), *cert. denied*, 519 U.S. 1152 (1997); *In re Long*, 476 P.3d 662, 669 (Cal. 2020) (stating, "[i]n general, estimating time of death requires expert knowledge on how to measure and evaluate relevant postmortem bodily processes and indicators such as lividity, rigor mortis, body temperature, and decomposition"); *People v. Price*, 193 N.E.3d 320, 349 (Ill. App. Ct. 2021) (observing that a witness was qualified to testify as an expert "based on his training and experience to offer testimony about signs that a person is dead, and he testified he was trained that rigor mortis is one of these signs"), *appeal denied*, 187 N.E.3d 702 (2022).

Haas cites *Ragland, supra*. There, two police officers were permitted to testify as lay witnesses, over defense objection, that they believed they observed a drug transaction involving Ragland and another individual. *Ragland*, 385 Md. at 711-14. When the prosecutor asked one of the officers on what basis did he think the exchange he observed was a drug deal, the officer replied, "[b]ased on two temporary assignments in a narcotics unit; two and a half years with this unit; involved in well over 200 drug arrests." *Id*. at 726. The other officer similarly related extensive training and experience in the investigation of

drug cases. *Id.* The Maryland Supreme Court concluded that the officers' testimony could not be considered lay opinion, as the witnesses had devoted considerable time to the study of the drug trade, and they offered their opinions that, among the numerous possible explanations for the events, the correct one was a drug transaction. *Id.* Thus, the Court accepted Ragland's argument that this amounted to expert testimony and the trial court erred in admitting the evidence as lay opinion. *Id.* at 716.

In addition to *Ragland*, *Norwood v. State*, 222 Md. App. 620, *cert. denied*, 444 Md. 640 (2015), is instructive. In *Norwood*, this Court disagreed that certain testimony from a police officer constituted improper opinion testimony. *Norwood*, 222 Md. App. at 646. In that case, defendant Norwood was initially believed to be a surviving victim of a knife attack, resulting in the death of her co-worker, at the Lululemon Athletica retail store in Bethesda, Maryland. *Norwood*, 222 Md. App. at 624. When Norwood was transported to Suburban Hospital, a police officer noticed a one to two-inch cut on her right hand, running parallel to her thumb. *Id.* at 627.

At trial, the officer testified that "his attention was drawn to that cut because it was typical of a common injury caused when a blade slips from one's grip and slides down the hand." *Norwood*, 222 Md. App. at 643. This testimony was stricken by the trial court and the jury was told to disregard it. *Id.* at 643-44. At a subsequent bench conference explaining this ruling, the court indicated the officer was not "qualified to say how that injury occurs." But, the court permitted the State to lay a foundation about the officer's knowledge about knife injuries. *Id.* at 644.

After testifying that he previously worked as an Army medic, the officer was permitted to testify that "[a] lot of times you can see knife injuries, particularly when you cause them to yourself, that are lacerations that are straight to the hand that was holding the blade. They tend to be clean and typically will run parallel to the thumb." *Norwood*, 222 Md. App. at 644. And, that these types of injuries would occur when "[t]he blade would slip through a grip and slide down the hand." *Id.* The officer also was permitted to testify that, when he saw the injury on Norwood's hand, that "[t]here was an approximately one to two inch laceration on her, on her hand that ran parallel to her thumb." *Id.* The court did not permit the officer to testify to the cause of the injury itself but did permit him to testify that he had seen this type of injury on prior occasions. *Id.* at 645.

When Norwood again raised this issue on appeal, we concluded the trial court properly exercised its discretion, on the grounds that the officer's testimony was not opinion evidence at all. We stated:

> In contrast to expert testimony, lay opinion testimony requires no specialized knowledge or experience but instead is "derived from first-hand knowledge" and is "rationally based." *Bruce v. State*, 328 Md. 594, 630, 616 A.2d 392 (1992). For example, we have explained that an opinion regarding the odor of marijuana is lay opinion rather than expert testimony. *In re Ondrel M.*, 173 Md. App. 223, 243, 918 A.2d 543 (2007) ("No specialized knowledge or experience is required in order to be familiar with the smell of marijuana. A witness need only to have encountered the smoking of marijuana in daily life to be able to recognize the odor.").
>
> First, we observe that [the officer] never offered any opinion, lay or expert, regarding the cause of Norwood's hand injury. His testimony regarding the cause of Norwood's injury was stricken by the trial court and the jury was instructed not to consider "how [the officer] thinks [the injury] happened." Rather, [the officer] testified about injuries he had observed in the past from slipped knives and described the injury he observed on Norwood's hand.

Norwood, 222 Md. App. at 646.[9]

Here, Bruzdzinski was asked about his observations in this case and, based on his experience in other cases, how long a body stays "flexible after death," and he replied "probably 45 minutes to an hour." The issue was relevant because if D.L. died approximately an hour before the first responders arrived that tended to rebut Haas' claim that D.L. just fell in the bathtub and drowned immediately before his 911 call. In determining whether this was admissible, we conclude this case is closer to *Norwood* than *Ragland*. We explain.

Unlike the officers in *Ragland,* who testified that their observations led to them to conclude that they actually witnessed a drug transaction, Bruzdzinski did not testify that his observations of D.L. led him to conclude that D.L. had been dead for at least 45 minutes to an hour. Indeed, this is closer to the facts of *Norwood* in that, although Bruzdzinski's limited testimony was an opinion, it was general and not a specific opinion as to D.L.'s time of death.

Moreover, Bruzdzinski testified, without objection, that he was personally involved in the efforts to treat D.L. on the scene and in the ambulance, saw that his "jaw was real tight and unable to be moved" making it difficult to "force air" into his body, that the medical team was unable to ventilate him, and that D.L. was "pretty much deceased at that time." Thus, his testimony, as in *Norwood*, was "derived from first-hand knowledge" and

[9] We also concluded that any error in admitting the officer's testimony was harmless beyond a reasonable doubt given the overwhelming evidence of Norwood's guilt in the murder of her co-worker. *Norwood*, 222 Md. App. at 646-48.

was "rationally based" on Bruzdzinski's direct observations and his prior experience as an EMT. *Norwood*, 222 Md. App. at 646; *see* Md. Rule 5-701. Accordingly, we do not conclude the trial court abused its discretion in admitting this brief testimony about his experience in other cases. *See Taneja v. State*, 231 Md. App. 1, 11 (2016) (observing that a court abuses that discretion when the court acts in an "arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law").

In any event, in addition to being waived, even to the extent that Bruzdzinski's testimony strayed into the realm of specialized knowledge and experience, we also hold that its admission was harmless beyond a reasonable doubt. As the Maryland Supreme Court has stated:

> [W]e reaffirm that the standard for harmless error analysis in Maryland is whether the reviewing court is convinced, beyond a reasonable doubt, that the error in no way influenced the jury's verdict. We also reaffirm this Court's longstanding approach of considering the cumulative nature of an erroneously admitted piece of evidence when conducting harmless error analysis.

Gross v. State, 481 Md. 233, 237 (2022); *Accord Abruquah*, 483 Md. at 697; s*ee also Dionas v. State*, 436 Md. 97, 108 (2013) ("An error is harmless when a reviewing court is 'satisfied that there is no reasonable possibility that the evidence complained of—whether erroneously admitted or excluded—may have contributed to the rendition of the guilty verdict'") (quoting *Dorsey v. State*, 276 Md. 638, 659 (1976)).

As recounted above, Rice offered similar and more detailed testimony about facts relating to rigor mortis, without objection. And although the State referred to rigor mortis a number of times during closing argument when suggesting a timeline of events, there was

other evidence rebutting Haas' defense beyond Bruzdzinski's limited testimony, including that D.L. was not wet, there was no water in the bathtub, the bathroom appeared to have been cleaned, and bruising does not occur after the heart stops beating. Any error was harmless beyond a reasonable doubt.

II.

Haas next asserts the court erred in admitting hearsay from Bruzdzinski that he was told by an unidentified declarant there was no water in the bathtub when first responders arrived on the scene. The State responds that Bruzdzinski's testimony was not offered to prove the truth of the matter asserted, and that any error was harmless beyond a reasonable doubt.

Under the Maryland Rules, hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801 (c). A "statement" is "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801 (a). A "declarant" is "a person who makes a statement." Md. Rule 5-801 (b). Further, "[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible." Md. Rule 5-802. Although review of the admission of evidence by a circuit court is usually considered under the abuse of discretion standard, "a circuit court has no discretion to admit hearsay in the absence of a provision providing for its admissibility. Whether evidence is hearsay is an issue of law reviewed *de novo*." *Gordon v. State*, 431 Md. 527, 536 (2013) (quoting *Bernadyn v. State*, 390 Md. 1, 7-8 (2005)).

Here, after D.L. was transported from the scene, Bruzdzinski returned to the apartment. The question presented concerns the following testimony:

> [PROSECUTOR]: Okay. And were you able to glean anything else when you went back into the apartment? Anything else he may have said?
>
> MR. BRUZDZINKSI: No.
>
> [PROSECUTOR]: Um, when you were—did you receive information when you were in the medic treating the child regarding how this incident may have happened?
>
> MR. BRUZDZINKSI: Ah, that it was a possible drowning.
>
> [PROSECUTOR]: Okay. And do you recall where you had heard that from?
>
> MR. BRUZDZINKSI: No.
>
> [PROSECUTOR]: Okay. Did the child—the injuries that you observed to the child, was that consistent with a drowning in your experience?
>
> MR. BRUZDZINKSI: No.
>
> [PROSECUTOR]: Why not? (PAUSE)
>
> MR. BRUZDZINKSI: Because he was—well, he wasn't, he wasn't wet. If he were drowning, he would be near water. The tub was empty. *There wasn't any water in the tub from, from what I was told*.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: The child being wet—um, you indicated he was not wet?
>
> MR. BRUZDZINKSI: Correct.
>
> [PROSECUTOR]: His hair was—and body was dry?
>
> MR. BRUZDZINKSI: Yes.

> [PROSECTOR]: Okay. Anything else in a drowned—in, in a patient that had recently drowned that you would have expected to see?
>
> MR. BRUZDZINKSI: No.
>
> [PROSECUTOR]: Okay.
>
> MR. BRUZDZINKSI: Oh, yeah. The—if he was drowned and in water for a prolonged period of time, he'd have like, the pruning fingertips and I, I didn't see any of that.

(Emphasis added).

There is no question that Bruzdzinski's testimony that he was told there was no water in the tub was an out-of-court declaration by an unidentified declarant. The State argues that the evidence was admissible as nonhearsay because it was not being offered for the truth of the matter asserted. Generally, in determining whether such a statement is hearsay, we begin by identifying the proposition that the evidence was offered to prove. *See Bernadyn*, 390 Md. at 10. *Accord Devincentz v. State*, 460 Md. 518, 553 (2018); *see also* Murphy & Murphy, *Maryland Evidence Handbook* § 702, at 330 (5th ed. 2020) ("When an out-of-court statement is offered in evidence, the trial judge must first determine why it is being offered").

We conclude that the statement at issue here was inadmissible hearsay. Bruzdzinski's testimony, that someone told him there was no water in the bathtub, was the critical point. Even though the State urges us to conclude that the statementit was not offered for the truth, we determine that fact there was no water in the bathtub at the time

D.L.was found was exactly what the out of court statement was meant to convey to the jury.[10]

Even so, we concur that any error in admitting the statement was harmless beyond a reasonable doubt because there was additional evidence there was no water in the bathtub. See *Gross*, *supra*, 481 Md. at 237 (2022); *see also Dove v. State*, 415 Md. 727, 744 (2010) ("[C]umulative evidence tends to prove the same point as other evidence presented during the trial or sentencing hearing. For example, witness testimony is cumulative when it repeats the testimony of other witnesses introduced during the State's case-in-chief"). Specifically, in addition to Bruzdzinski's testimony on the subject, Michael Janney, another Fire Technician/EMT on the scene, testified as follows, without objection:

> [PROSECUTOR]: And upon him telling you about, he might have left him in the tub and might have dropped him a couple of times, did you have an occasion to look around the apartment?
>
> MR. JANNEY: I did. Because I, I—you know, I wasn't getting—I was just trying to put a picture—put a, put a picture together on what might have happened because they already had [D.L.] downstairs and they didn't know what happened. They're just trying to, you know—because we're trying to—you know, we pass information from, from us to the hospital, and if you don't know the situation—
>
> [PROSECUTOR]: Mm-hmm.

[10] Generally, an out of court statement made for the purposes of diagnosis and treatment fall into an exception to the rule against hearsay. We have held "[t]he rule against hearsay does not exclude out of court declarations offered to show the effect that such declarations had on the person who heard them." *Foreman v. State*, 125 Md. App. 28, 36 (1999) (noting that trial judge admitted a statement from a victim to an EMT that "his father had punched him in the face and kicked him in the chest" under the medical diagnosis and treatment exception but that the issue was not properly preserved). We think the statement here would not fall within that exception because Bruzdzinski was not contemplating treatment as D.L. had already been transported from the scene and Bruzdzinki was trying to determine whether D.L. had drowned as reported.

> MR. JANNEY: —or, you know, it maybe—you know, the injuries or the extent the injuries, injuries could be hidden or things, or things like that. So, I'm looking around. He said that there was—possibly in the tub, so I'm thinking, you know, drowning. I look in the tub. There's no water in the tub. It did look like the shower was on. You know, it—I did notice that the curtain was pulled. Then, I pulled the one side or the other. There was a small opening. I looked in there and there was a little bit of water in the tub. It was-- the tub was not full of water. There were towels hanging about the shower curtain. It looked like a normal bathroom that somebody had been—had cleaned up.[11]

Accordingly, even if the court erred in admitting a statement from an unidentified declarant to Bruzdzinski that informed him there was no water in the bathtub, whereas there was similar evidence admitted without objection, any error was harmless.

III.

Finally, Haas challenges the sufficiency of the evidence to sustain his convictions on the ground that there was "no direct evidence that Mr. Haas actually caused the injuries to D.L. which resulted in death." Apparently conceding that he was "the sole adult responsible for the supervision" of the child and that there was circumstantial evidence supporting the convictions, Haas specifically contends that "any conclusion that Mr. Haas actually intentionally caused the injuries—let alone by, or because of, 'cruel or inhumane treatment,' would be based on pure speculation." The State disagrees, as do we.

[11] Janney repeated, without objection, that, although the bathtub may have been "wet," there was no water in the tub. Officer Nicholson, another first responder, testified that he did not see any "signs of water" on the bathroom floor, or a "trail of water" leading from the bathroom. We further note that the State relied on Janney, not Bruzdzinski, during closing argument.

In considering a challenge to the sufficiency of the evidence, we "examine the record solely to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Beckwitt v. State*, 477 Md. 398, 429 (2022) (quoting *State v. Wilson*, 471 Md. 136, 159 (2020)), *cert. denied*, 143 S.Ct. 216 (2022). *Accord Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Further, "we view the State's evidence, including all reasonable inferences to be drawn therefrom, in the light most favorable to the State." *Id.* This standard of review applies to both direct and circumstantial evidence. *Beckwitt*, 477 Md. at 429 (citing *White v. State*, 363 Md. 150, 162 (2001). Indeed, "[c]ircumstantial evidence may support a conviction if the circumstances, taken together, do not require the trier of fact to resort to speculation or conjecture, but circumstantial evidence which merely arouses suspicion or leaves room for conjecture is obviously insufficient." *Beckwitt*, 477 Md. at 429 (quoting *Smith v. State*, 415 Md. 174, 185 (2010)).

Furthermore, "[w]hen making this determination, the appellate court is not required to determine 'whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *Roes v. State*, 236 Md. App. 569, 583 (2018) (quoting *State v. Manion*, 442 Md. 419, 431 (2015) (emphasis in *Manion*). "This is because weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (quotation marks and citation omitted). "Our deference to reasonable inferences drawn by the fact-finder means we resolve conflicting possible inferences in the State's favor, because we do not second-guess the jury's determination where there are competing rational inferences

available." *State v. Krikstan*, 483 Md. 43, 64 (2023) (quotations marks and citation omitted); *Accord State v. Smith*, 374 Md. 527, 534 (2003). In other words, the relevant question for the appellate court "is not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Scriber*, 236 Md. App. at 344 (emphasis in original, quotation marks and citation omitted).

Haas was convicted of child abuse in the first degree. At the time of the offense, the pertinent statute provides:

> (b)(1) A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not
>
> cause abuse to the minor that:
>
> (i). results in the death of the minor; or
>
> (ii). causes severe physical injury to the minor

Md. Code (2002, 2017 Repl. Vol., 2023 Supp.) § 3-601 (b) of the Criminal Law Article ("Crim. Law").

"Abuse" is defined under this same statute as:

> (2) "Abuse" means physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act.

Crim. Law § 3-601 (a) (2).

The meaning of "cruel or inhumane treatment" is not defined by statute. Instead, that standard has been judicially construed to have "a settled and commonly understood

meaning." *Bowers v. State*, 283 Md. 115, 126 (1978). As the Maryland Supreme Court explained:

> Webster's Third New International Dictionary defines the word "*cruel*" as "disposed to inflict pain (especially) in a wanton, insensate, or vindictive manner: pleased by hurting others: sadistic." The word "inhuman," a variant of "*inhumane*," is defined by the same authority as "lacking the qualities of mercy, pity, kindness, or tenderness: cruel, barbarous, savage . . . ." Black's Law Dictionary (4th ed. 1968) defines the term "cruelty" as "the intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; . . . applied to the latter, the wanton and unnecessary infliction of pain upon the body." Clearly, then, the standard "*cruel or inhumane*" has a settled and commonly understood meaning.

Bowers, 283 Md. at 125-26 (cleaned up, emphasis added).

As for "malice," its meaning may be gleaned from principles in existing law. *See Dishman v. State*, 352 Md. 279, 290-91 (1998) (stating in a homicide case that "[b]y malice we mean 'the presence of the required malevolent state of mind coupled with the absence of legally adequate justification, excuse, or circumstances of mitigation'") (citations omitted). For instance, and simply by way of analogy, in *Debettencourt v. State*, 48 Md. App. 522, *cert. denied*, 290 Md. 713 (1981), an arson case, this Court discussed in *dicta* the meaning of malice in the context of depraved heart murder:

> It is the form that establishes that the wilful doing of a dangerous and reckless act with wanton indifference to the consequences and perils involved, is just as blameworthy, and just as worthy of punishment, when the harmful result ensues, as is the express intent to kill itself. This highly blameworthy state of mind is not one of mere negligence (even enough to serve as the predicate for civil tort liability). It is not merely one even of gross criminal negligence (even enough to serve as the predicate for guilt of manslaughter). *It involves rather the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.*

Debettencourt, 48 Md. App. at 530 (emphasis added).

Ultimately, the *mens rea* of child abuse "does not involve an accused's subjective belief." *Fisher v. State*, 367 Md. 218, 270 (2001). Rather, child abuse is a "general intent crime, and its mens rea requires only intentionally acting or failing to act under circumstances that objectively meet the statutory definition of abuse." *Id.* "The injury must be intentional in the sense that it is non-accidental[.]" *Id.* at 279. This conclusion is consistent with the purpose of the child abuse statute of "protecting the person of infants and minors from physical injury at the hands of those responsible for their welfare." *Id.* at 277.

In this case, we are persuaded that the conduct and consequences met the statutory definition of abuse. As set forth in our background discussion of the facts of this case, D.L.'s injuries were severe and the jury could rationally decide that they were the result of cruel or inhumane treatment or a malicious act under the circumstances. Instead, Haas' argument is that there was "no direct evidence that Mr. Haas actually caused the injuries to D.L which resulted in death."

And yet, there was both direct and circumstantial evidence that Haas was alone with D.L. when the injuries were sustained. There was forensic evidence that the bruising was recent, and that rigor mortis had set in, most likely within an hour or so of when the responders arrived. Furthermore, Haas admitted that he dropped D.L. several times in the tub. Although there was no direct evidence from anyone witnessing Haas striking two-year-old D.L. or inflicting causing blunt force trauma upon the child's body, there was sufficient circumstantial evidence that permitted rational inferences to that effect.

Indeed, as this Court has explained, "[c]hoosing between competing inferences is classic grist for the jury mill." *Cerrato-Molina v. State*, 223 Md. App. 329, 337, *cert. denied*, 445 Md. 5 (2015). "A guilty inference may be drawn even from predicate circumstances that could give rise just as well to an innocent inference. That is always the case with a package of permitted inferences." *Cerrato-Molina*, 223 Md. App. at 348. There are few facts, including even ultimate facts, that cannot be established by inference. As this Court pointed out in *Evans v. State*, 28 Md. App. 640, 702-03 (1975), *aff'd*, 278 Md. 197 (1976) :

> In a real sense, the whole decision-making process is the process of drawing inferences. From fact A, we infer fact B. From a confession, we infer guilt. From the pulling of a trigger, we infer an intent to harm. From the possession of recently stolen goods, we infer the theft. From the motive, we infer the criminal agency. From the presence of the sperm, we infer the penetration. From the muddy footprints on the living room rug, we infer the unlawful entry. The whole phenomenon of circumstantial evidence is the phenomenon of inferring facts in issue from facts established.

Id. And, as our Supreme Court has explained:

> There is nothing mysterious about the use of inferences in the factfinding process. Jurors routinely apply their common sense, powers of logic, and accumulated experiences in life to arrive at conclusions from demonstrated sets of facts.

Robinson v. State, 315 Md. 309, 318 (1989).

There were sufficient facts presented to the jury to permit them to find that Haas abused D.L. and that his conduct was cruel, inhumane, and malicious. The evidence was sufficient to sustain Haas' convictions.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY ARE

AFFIRMED. APPELLANT TO PAY THE COSTS.